



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

178485

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

March 15, 2006

Frank R. Ellerbe, III

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH
(803) 779-8900 | (803) 227-1112 *direct*

FAX
(803) 252-0724 | (803) 744-1556 *direct*

fellerbe@robinsonlaw.com

Via Email and Hand Delivery

Mr. Charles Terreni, Chief Clerk of the Commission
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

**Re: Total Environmental Solutions, Inc. – Rate Case
Case No. 2004-90-W/S**

PROCEIVED
2006 MAR 15 PM 3:34
SC PUBLIC SERVICE
COMMISSION

Dear Charlie:

Enclosed for filing please find the proposed Order on Remand on behalf of Foxwood Property Owners' Association in this case. We will provide a Word version to you by copy of this letter via email and adobe version to counsel for the other parties. Please stamp the extra copy provided as proof of filing and return it with our courier.

Please contact me if there are any questions.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

/bds
enclosure

cc/enc: F. David Butler, Esquire (via email & U.S. Mail)
John F. Beach, Esquire (via email & U.S. Mail)
Florence P. Belser, Esquire (via email & U.S. Mail)
Wendy B. Cartledge, Esquire (via email & U.S. Mail)
H. Asby Fulmer, III, Esquire (via email & U.S. Mail)

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-90-W/S – ORDER NO. 2006-
March __, 2006**

RECORDED
2006 MAR 15 PM 3:34
SC PUBLIC SERVICE
COMMISSION

In Re:)

Application of Total Environmental)
Solutions, Inc. for Approval of an)
Adjustment in Rates and Charges for)
Water and Sewer Services)
_____)

**Order on Remand
on Operating Margin**

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on remand from the Circuit Court of Richland County. Total Environmental Solutions, Inc. ("TESI") is a water and sewer utility operating in the State of South Carolina. This case arises from TESI's application filed on March 18, 2004, seeking approval of a new schedule of rates and charges for water and sewer services that TESI provides to its customers in the Foxwood Hills resort community in Oconee County, South Carolina.

Petitions to intervene were filed by the Foxwood Hills Property Owners Association, Inc. ("Foxwood Hills"), the Consumer Advocate for the State of South Carolina ("Consumer Advocate"), and the South Carolina Department of Health and Environmental Control ("DHEC"). A public hearing was held on July 26, 2004 in Walhalla, South Carolina. On August 24 and 25, 2004, the hearing on the application was held in the Commission's hearing room in which Foxwood Hills, DHEC, and the Consumer Advocate participated. The panel of

Commissioners hearing the original case included Commissioners Mitchell, Moseley, and Clyburn.

On September 17, 2004, the Commission issued Order No. 2004-434 in which it established new rates to be phased-in over a two year period in three installments and eliminated certain expenses recommended by the Commission Staff. TESI and Foxwood Hills filed petitions for reconsideration. On January 14, 2005, Order No. 2004-574 was issued in which the Commission reversed its position on enhancement fees.

TESI appealed the decisions on March 2, 2005, to the Circuit Court for Richland County under Civil Action No. 2005-CP-40-0986. The Honorable James R. Barber, III issued an order on October 25, 2005, affirming the Commission's decisions regarding the adjustments of certain expenses, reversing this Commission's decision to phase in rates over two years, and remanding the case to the Commission to determine an appropriate, single operating margin for TESI based on the existing record of the case.

On August 25, 2005, the Commission issued Order No. 2005-450 in which it found that TESI had posted a sufficient surety to put its rates under appeal into effect under bond pursuant to S.C. Code Ann. Section 58-5-240(D) (Supp. 2005). TESI has not yet put those rates into effect.

On January 23, 2006, the Commission issued Order No. 2006-51 in which it designated the original hearing panel to hear the arguments on remand and render a decision. Oral arguments were held on January 24, 2006, regarding what action should be taken as a result of Judge Barber's decision reversing the

phased-in rate structure and remanding the matter to this Commission. Order No. 2006-89 was issued on February 8, 2006, in which the Commission held that the Circuit Court expressly remanded the case for the purpose of the Commission making a determination as to one appropriate operating margin for TESI based on the existing record in the case. Therefore, the matters to be decided are the appropriate operating margin for TESI and the appropriate rates to generate revenues to allow TESI to earn that operating margin.

EVIDENCE AND CONCLUSIONS

Order No. 2004-434 held that the operating margin methodology was the appropriate rate-setting methodology to be used in TESI's application based on the exhibits and testimony presented during the hearing. All accounting adjustments have been previously resolved in Order Nos. 2004-434 and 2004-574. While TESI disagreed with the Commission's resolution of some of these issues, Judge Barber affirmed this Commission on all of them. At this time the only remaining issue is the operating margin to be applied in this case and the establishment of rates to produce that margin.

When setting rates for a regulated utility like TESI, the Commission first determines the proper adjustments to the rate base, then it balances the respective interests of the company and the consumer to determine a fair return on the company's investment. *Parker v. S.C. Public Service Com'n*, 280 S.C. 310, 313 S.E.2d 290, 291-292 (1984); *Southern Bell Telephone & Telegraph Co. v. PSC*, 270 S.C. 590, 244 S.E.2nd 278, 281 (Sup. Ct. 1978).

The Commission has considered the proposed increase presented by the Company and balanced the Company's interests with that of its customers. We reviewed Commission Staff Witness Scott's analysis of the effect of Staff's adjustments on the operating margin at the rates proposed by TESI and considered the impact of the proposal on the ratepayers. (8/25/04 Tr. at 7-10, & 41).

We have also considered the testimony of TESI's CEO, TESI's expert financial consultant, and Commission Staff witnesses Richardson to determine an appropriate operating margin to use in the case. TESI's expert witness Shambaugh recommended a 12.75% operating margin for both the water and sewer operations. (8/24/04 Tr. at 176). Shambaugh testified that a reasonable margin of cash flow above normalized operations is necessary for the company to provide for emergency situations, attain financial viability, and have the ability to secure long term debt at a reasonable cost rate. (8/24/04 Tr. at 176). Shambaugh indicated that an operating margin of 12.75% would be reasonable and would provide the company with a level of operating income that would assist it in attracting long-term financing. (8/24/04 Tr. at 215-216).

Shambaugh defined operating margin as the margin of revenue over and above expenses. (8/24/04 Tr. at 293, l. 13-20). Shambaugh recommended that the Commission adopt the operating expenses proposed by TESI and TESI's operating margin of 12.75 %. (8/24/04 Tr. at 296 – 297).

Based on the adjustments the Commission has approved in Order Nos. 2004-434 and 2004-574 as affirmed by Judge Barber, TESI's adjusted operating

expenses are \$451,834. The Commission finds that TESI should have an opportunity to earn a 12.75% operating margin. In order for TESI to earn a 12.75% operating margin it will need to charge rates which will produce \$522,681 in revenues. Our calculation is shown in the following table:

TABLE A

Operating Revenues	\$	522,681
Operating Expenses	\$	451,834
Net Operating Income/Loss		70,847
Add: Customer Growth		<u>0</u>
Interest Expense for Operating Margin	\$	4,195
Operating Margin		<u>12.75%</u>

The revenue required to achieve the rate of return found just and reasonable is \$522,681. These additional revenues will be produced pursuant to an increase in water and sewer rates which we hereby grant as shown in Appendix A attached to this Order which is incorporated by reference. The Commission finds and concludes that the rates and charges approved herein achieve a balance between the interests of TESI and those of its customers.

At the hearing in this case TESI's expert witness testified that if this Commission accepted Staff adjustments which would reduce the company's pro forma operating expenses that the Commission should allow TESI a higher operating margin. (8/24/04 Tr. at 294-297. See also TESI CEO's testimony- 8/24/04 Tr. at 155 & Staff Witness Richardson's testimony - 8/25/04 Tr. at 110-111). TESI's expert witness' testimony was based on the belief that TESI had a right to earn a certain level of revenues without regard to the company's level of adjusted operating expenses or operating margin. We reject that approach which

is inconsistent with this Commission's traditional use of the operating margin method of regulation.

The Commission rejects TESI's contention that the company is entitled to a larger operating margin since the Commission accepted Staff's adjustments. (8/24/04 Tr. at 208-210, 294-297 & Hearing Ex. 10). The validity of a requested rate increase is based on figures provided by the company using the "test year" formula. Where an unusual situation exists which shows the test year figures are atypical the Commission adjusts the test year data. *Parker v. S.C. Public Service Com'n*, 280 S.C. 310, 313 S.E.2d 290, 292 (Sup. Ct. 1984). Adjustments for known and measurable changes in expenses are within the discretion of the Commission. *Porter v. S.C. Public Service Com'n*, 328 S.C. 222, 493 S.E.2d 92, 97 (Sup. Ct. 1997).

The Commission has already determined the proper adjustments to the rate base in Order Nos. 2004-434 and 2004-574. We examined Commission Staff Witness Richardson's testimony regarding Staff's adjustments to some expenses and eliminated expenses which were not used and useful to provide service as part of our analysis which resulted in the issuance of these Orders. (8/25/04 Tr. at 109-110).

It is within the Commission's statutorily delegated power to determine the amount of expenses to be charged to the ratepayers. *Patton v. S.C. Public Service Com'n*, 280 S.C. 288, 312 S.E.2d 257, 259 (Sup. Ct. 1984). See also *Porter v. S.C. Public Service Com'n*, 328 S.C. 222, 493 S.E.2d 92, 97 (Sup. Ct. 1997). To allow TESI to earn revenue through an increased operating margin to

offset the adjustments approved in Order Nos. 2004-434 and 2004-574 would negate this power.

IT IS THEREFORE ORDERED THAT:

1. TESI is granted an increase in rates and charges as provided herein for its water and sewer operations in South Carolina.
2. The schedule of rates and charges hereby approved for service rendered on or after the date of this Order in Appendix A.
3. This order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

O'Neal Hamilton, Vice-Chairman

TOTAL ENVIRONMENTAL SOLUTIONS, INC.

2299 Dr. Johns Rd.

Westminster, S.C. 29693

Filed Pursuant to Docket No. 2004-90 -W/S -Order No. 2006-
Effective Date of Order: March ____, 2006

SCHEDULE OF RATES AND CHARGES

AVAILABILITY: Available within the Company's service area.

APPLICABILITY: **Residential** rates apply to all lots within the Company's service area upon which either a dwelling or one or more of its appurtenances is permanently affixed or located.

RV rates apply to all RV lots within the Company's service area upon which either a dwelling or one or more of its appurtenances is not permanently affixed or located.

Commercial rates apply to any commercial or master-metered residential customer for any purpose.

Commercial/Condominium applies to any condominium complex within the Company's service area. Commercial customer is provided with a single monthly bill based upon the number of condominium units in the applicable complex multiplied by the applicable per-unit rate set forth below.

WATER SERVICE RATES AND CHARGES

WATER MONTHLY RATES		
Residential Per Lot and Commercial/Condominium Per Unit	RV Section Per Lot	Commercial Per Tap
\$45.07	\$33.80	\$65.23

NONRECURRING CHARGES:

CONNECTION FEE (New Customer)

**\$250.00 per Residential or RV Lot,
Condominium Unit, or SFE***

This charge is to reimburse the Company for all costs, including labor and materials, associated with establishing the initial service connection.

RE-CONNECTION FEE

**\$50.00 per Residential or RV
Lot, Condominium Unit, or
SFE***

This charge is to reimburse the Company for all costs, including labor and materials, associated with re-establishing service after disconnect for non-payment, failure to make deposit, fraudulent, or seasonal use. Customers who ask to be reconnected within ten months of disconnection will be charged the monthly utility rate for the service period they were disconnected. The Reconnection Fee shall also be due prior to reconnection if sewer service has been disconnected at the request of the customer.

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of a customer is less than one (1). If the equivalency rating of a customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the water system is requested.

BILLING OF TENANTS

The Utility will, for the convenience of the owner, bill a tenant. However, all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure to pay for services rendered to a tenant may result in service interruptions.

CONSTRUCTION STANDARDS:

The Utility requires all construction to be performed in accordance with generally accepted engineering standards, at a minimum. The Utility from time to time may require that more stringent construction standards be followed.

EXTENSION OF UTILITY SERVICE LINES AND MAINS

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to connect to its water system. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to any appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule, and comply with the guidelines and standards hereof, shall not be denied service, unless water supply is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving water system. In no event will the Utility be required to construct additional water supply capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding water supply capacity to the affected water system.

* A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory Loadings for Domestic Wastewater Treatment Facilities --25 S.C. Code Ann. Regs. 61-67 Appendix A (2003 Supp.)

SEWER SERVICE RATES AND CHARGES

SEWER MONTHLY RATES		
Residential Per Lot and Commercial/Condominium Per Unit	Residential Per Lot and Commercial/Condominium Per Unit	Commercial Per Tap
\$40.22	\$30.16	\$44.39

NONRECURRING CHARGES:

CONNECTION FEE (New Customer)

\$400.00 per Residential or RV Lot, Condominium Unit, or SFE*

This charge is to reimburse the Company for all costs, including labor and materials associated with establishing the initial service connection.

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of a customer is less than one (1). If the equivalency rating of a customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the water system is requested.

RE-CONNECTION FEE

\$250.00 per Connection

This charge is to reimburse the Company for all costs, including labor and materials, associated with re-establishing service after disconnect for non-payment, failure to make deposit, fraudulent, or seasonal use. Customers who ask to be reconnected within ten months of disconnection will be charged the monthly utility rate for the service period they were disconnected. The Reconnection Fee shall also be due prior to reconnection if sewer service has been disconnected at the request of the customer.

BILLING OF TENANTS

The Utility will, for the convenience of the owner, bill a tenant. However, all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure to pay for services rendered to a tenant may result in service interruptions.

TOXIC AND PRETREATMENT EFFLUENT GUIDELINES

The Utility will not accept or treat any substance or material that has been defined by the United States Environmental Protection Agency ("EPA") or the South Carolina Department of Environmental Control ("DHEC") as a toxic pollutant, hazardous waste, or hazardous substance, including pollutants falling within the provisions of 40 CFR §129.4 and §401.15. Additionally, pollutants or pollutant properties subject to 40 CFR §403.5 and §403.6 are to be processed according to the pretreatment standards applicable to such pollutants or pollutant properties, and such standards constitute the Utility's minimum pretreatment standards. Any person or entity introducing any such prohibited or untreated materials into the Company's sewer system may have service interrupted without notice until such discharges cease, and shall be liable to the Utility for all damages and costs, including reasonable attorney's fees, incurred by the Utility as a result thereof.

CONSTRUCTION STANDARDS:

The Utility requires all construction to be performed in accordance with generally accepted engineering standards, at a minimum. The Utility from time to time may require that more stringent construction standards be followed.

EXTENSION OF UTILITY SERVICE LINES AND MAINS

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to discharge acceptable wastewater into one of its sewer systems. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to an appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule and to comply with the guidelines and standards hereof, shall not be denied service, unless treatment capacity is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving sewer system.

In no event will the Utility be required to construct additional wastewater treatment capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding wastewater treatment capacity to the affected sewer system.

* A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory Loading for Domestic Wastewater Treatment Facilities --25 S.C. Code Ann. Regs. 61-67 Appendix A (2003 Supp.)

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-90-W/S**

In Re:

Application of Total Environmental
Solutions, Inc., ("TES") for Approval
of an Adjustment in Rates and
Charges for Water and Sewer
Services

CERTIFICATE OF SERVICE

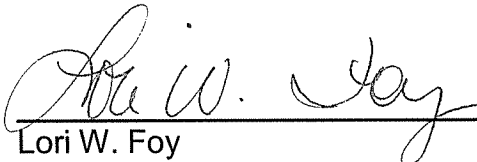
This is to certify that I, Lori W. Foy, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **proposed Order on Remand on Operating Margin** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

John Beach, Esquire
Ellis Lawhorne & Sims, P.A.
P.O. Box 2285
Columbia, SC 29202

Florence Belser, Esquire
Wendy Cartledge, Esquire
Office of Regulatory Staff
P.O. Box 11263
Columbia, SC 29211

RECEIVED
2006 MAR 15 PM 3:34
SC PUBLIC SERVICE
COMMISSION

Dated at Columbia, South Carolina this 15th day of March, 2006.


Lori W. Foy